IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1111 of 1999
with
CIVIL APPLICATION NO. 12021 OF 1999
with
CIVIL APPLICATION NO. 1927 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISH MISTRY CHAIRMAN INDIAN INSTITUTE OF ARCHITECTS
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 1111 of 1999 & Civil Application No. 1927 of 2000

MR B.J. SHELAT FOR MR. BD KARIA for Petitioner
MR. S.K. PATEL, AGP, for Respondent No. 1
MRS KETTY A MEHTA for Respondent No. 2
MR B.P. TANNA FOR MR. BP MUNSHI for Respondent No. 3, 5 & 6
MS NIRALI B MUNSHI for Respondent No. 4
MR MH RATHOD for Respondent No. 7

Civil Application No. 12021 of 1999
MR. A.K. CLERK for the applicant
MR. B.D. KARIA for the respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision: 20/06/2000
C.A.V. JUDGEMENT (Per B.C. Patel, J)

By way of this Public Interest Litigation the petitioner, the Chairman of the Indian Institute of Architects, Gujarat Chapter, Ahmedabad, has moved this court for quashing and setting aside the agreement entered into between the respondent, Gujarat Housing Board and respondent No. 3 Sandip & Prerak Associates claiming to be the reputed Architectural Consultancy Firm.

2. Short facts which are relevant to dispose of this petition are as under:

3. The Architects Act, 1972 (hereinafter referred to as `the Architects Act') has been enacted by the Parliament which provides for Council of Architects, President and Vice-President of Council, Finances of Council, Recognition of qualifications granted by authorities in India, Recognition of architectural qualifications granted by authorities in foreign countries, effect of recognition, Minimum standard of architectural education and Professional conduct etc. Chapter III refers to Registration of Architects. Chapter III provides for preparation and maintenance of register, qualification for entry in register, procedure for subsequent registration, removal from register, procedure in inquiries relating to misconduct, effect of registration. In Chapter IV provisions are made including that of prohibition against use of title and cognizance of an offence.

4. According to the Architects Act, an architect is a person whose name is for the time being entered in the register. Person possessing minimum standard of architectural education required for granting qualifications by Institutions in India can be enrolled as an architect in the register maintained under the Act. It is for the Council to prescribe minimum standard of architectural education. Section 37 of the Architects Act prohibits use of title unless he is a registered architect. Section 37 of the Architects Act being

relevant is reproduced hereunder:-

"Prohibition against use of title - (1) After the expiry of one year from the date appointed under sub-section (2) of Section 24, no person other than a registered architect, or a firm of architects shall use the title and style of architect:

Provided that the provisions of this section shall not apply to

(a) practice of the profession of an architect by a person designated as a "landscape architect" or "naval architect";

(b) a person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

Explanation - for the purposes of claus (a) -

(i) "Landscape architect" means a person who deal with the design of open spaces relating to plants, trees and landscape;

(ii) "Naval architect" means an architect who deals with design and construction of ships.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both."

5. From the aforesaid provisions it is clear that a firm of architects can use title if all the partners are architects and not otherwise. For a firm which is introducing itself as a firm of architects, all its partners must be architects under the Act. If a person is not an architect, he cannot be introduced as a partner to the firm of architects and such person cannot be introduced as an architect. Like the legal profession, medical profession and Chartered Accountants, for the architects, Architects Act prescribes qualification, entry of name in the register, removal of name from the

register and procedure in inquiries relating to misconduct. The legislature considering the fact that the architects are engaged in profession and not in business, has enacted the Architects Act with a view to maintain standards of architects and to protect the dignity of architects. The petitioner in the capacity as the Chairman of Gujarat Chapter of Indian Institute of Architects, submitted that the national body of Architectural professionals has 15000 members while the Gujarat Chapter of Indian Institute of Architects has about 600 members. He being interested to uphold and maintain standards and status of practising Architects in Gujarat in accordance with the provisions of the Architects Act and the rules and regulations framed thereunder, has thought it fit to file the petition and to point out the illegalities and gross irregularities committed by the respondents.

6. Respondent No. 2 is the Chairman of the Gujarat Housing Board which is duly constituted under the provisions contained in Gujarat Housing Board Act, 1961 and the Board took a decision to appoint private architects for its project at Gotha Housing Township worth Rs. 230 crores in 43 hectors of land at Gotha village, touching the border of Ahmedabad. It is averred in the petition that the decision to appoint private architects was taken by the Housing Board and to pay consultancy charges of about Rs. 10 crores to respondent Nos. 3 to 6.

7. Respondent No. 3 is a partnership firm carrying on business in the name and style of M/s. Sandip & Prerak Associates which has its office at Prajal Apartments, opp. Prarth Empire, Near Maninagar Police Station, Maninagar, Ahmedabad. The said firm has three partners, namely, respondent Nos. 4, 5 and 6. Respondent No. 4 V.T. Lalwani, is an architect, whose name appears in the register of the Architects. Respondent No. 5 is an Engineer having a diploma in Engineering while respondent No. 6 is HUF of respondent No. 5. Respondent No. 5 is a karta of the said HUF. It is pointed out in the petition that respondent No. 4 V.T. Lalwani's share in the firm is 2% while share of respondent No. 5 is 28% and the HUF of Sanjay Sharadchandra Shah's share is 70%. An agreement was executed by and between partners respondent Nos. 4, 5 and 6 of respondent No. 3, a partnership firm, on 1.4.1997. Clause (3) of the agreement refers to the object of the firm. Reading the same it appears that

respondent No. 3 is to be considered as a sister/secondary concern of M/s. Sanjay Shah and Associates. Respondent No. 3 shall carry out the business of Architectural, Civil, Engineering , Planning and Designing etc. of Government, Semi-Government, Public Sector or Private Trust or Private Properties. It will purchase the land, organize it and construct houses for sale. Over and above this, if any other business is required to be carried out with the consent of the partners, the same shall be carried out. In clause (7) there is a reference to working partners and the amounts to be paid as per book profits in accordance with Section 40(b) of the Income-tax Act, 1961. Respondent No. 4 is referred as working partner who is closely associated with Sanjay Shah and Associates and he has a registration certificate issued by the Indian Institute of Architects bearing registration No. C/A 15657. For the purpose of licence/identification, registration number of architect is required. The said registration certificate and its registration number shall be used as authorised registered number. Thus, for the purpose of identification, registration and use of the registration number of respondent No. 4 is considered as legitimate registered number of the firm and respondent No. 4 has agreed to allow the use of such number in favour of the partnership firm.

8. So far as the work is concerned, it is clear that only other partners were authorised to deal. It is only that Sanjay Sharadchandra Shah was authorised to present the bills, to receive payment, to appoint advisers, to prepare, accept and finalise details of the plans, to take a decision, to enter into an agreement, to offer or to accept or reject offer, to give public advertisement, to appoint staff or to cancel appointment of the staff, to appoint contractor, to accept bills, to finalise bills and to take a decision in this behalf and to do all other act for carrying out the object of the firm. Respondent No. 5, Sanjay Sharadchandra Shah was authorised to deal on behalf of the firm. Reading the agreement, it clearly appears that respondent No. 4 V.T. Lalawani was not required to do anything except to permit the use of his registration number by getting 2% of the book profits of the firm.

9. Clause (10) of the agreement indicates that all accounts shall be operated only by Sanjay or Sharadchandra Rajnikant Shah.

10. Clause (16) of the agreement refers to the service of registered architect Harishbhai C. Parikh who is rendering his service since 1984. In case of need of experts' services, clause (16) of the agreement is required to be referred. It is specifically stated that services of registered Architect Harishbhai C. Parikh are availed of by the firm as well as sister concern since 1984. Registration number of the said architect is used wherever and whenever required with his consent for which agreement is also executed. Thus services of respondent No. 4 were only for a limited purpose of using his registration number and no further. Thus, it is clear that the agreement is sham agreement executed only with a view to use the name of respondent No. 4 as architect and to introduce the firm as firm of architects.

11. On 5.2.1998 all the partners of the firm executed Power of Attorney in favour of Sanjay Sharadchandra Shah and thus on behalf of firm, respondent No. 5 was required to sign. On 5.2.1998 an agreement was executed between respondent No. 3 and 4 in connection with Gujarat Housing Board, Gotha Township. In that document respondent No. 4, authorised partnership firm to use his registration number and licence wherever and whenever is required and the same shall be considered as a registration number and licence in favour of the partnership firm. The partnership firm was registered on 13.2.1998 with the Registrar of Firms, Ahmedabad City. The petitioner has placed on record all the documents which are referred to hereinabove.

12. Gujarat Housing Board published an advertisement in English daily of Western Times (evening circulation only) dated 18.1.1997 inviting applications for empanelment of architectural consultants. This newspaper has only evening edition. The last date for collecting application forms was fixed as 29.1.1997 while the last date for submitting application forms was fixed as 5.2.1997. The advertisement which is placed on record, if read, it becomes clear that the Housing Board invited applications for pre-qualifications to appoint panel of Architectural Consultancy Firms for its project. It invited applications from reputed architectural consultancy firms interested for pre-qualification. It appears that five applications were received by the Board and marks were awarded as indicated in para 7 of the petition. Respondent No. 3 firm was given third rank (56 marks) on the basis of assessments. The petitioner has obtained comparative statement for pre-qualification

of Architects Firms which is placed on record at annexure-C. It is pointed out in the petition that respondent No. 3 firm made a tall claim of practising as architects since 10 years in its application while in fact, respondent No. 3 firm commenced its business on 18.1.1997 which fact cannot be denied. In assessing and evaluating status of the applicant firm, marks were to be assigned at the rate of one mark in term of each year of practice subject to maximum of 10 marks. Respondent No. 3 has been given 10 marks as per its claim of practice for 10 years. On behalf of the petitioners it is pointed out that this is utterly incorrect and misleading. It is clear that the firm came into existence only in 1997 and therefore was not entitled to have the credit of 10 marks at the rate of one mark per year. It is suggested that the respondent Board has connived at this glaring lapse with a view to favour the respondent No. 3 firm and its partners.

13. As indicated in earlier part of the judgement that out of the three partners only respondent No. 4 Mr. V.T. Lalwani, partner of respondent No. 3, is an architect. As per the public advertisement, applications were invited latest by 5.2.1997. An agreement that respondent Nos. 4, 5 and 6 executed on 1.4.1997, is much later than the date on which application was submitted pursuant to the advertisement of the respondent Board dated 18.1.1997. Surprisingly, respondents have come out with a case that they commenced business on 18.1.1997, the date on which advertisement appeared in the newspaper. It is thus pointed out that the marks given by the respondent Board are incorrect and are given only with a view to favour respondent No. 3. The petitioner has specifically averred in the petition in para 11 that as per the provisions of Section 2(a) to 2(e) and Section 35 and Section 37 of the Architects Act, there cannot be a partnership between an architect and non-architect. It is further submitted by the petitioner that the firm having all the partners who are architects can introduce the firm as an architectural firm or architectural consultant. If one of the partners of the firm is not an architect, the firm cannot be introduced as an architectural consultancy firm or cannot be appointed as an architectural firm. Section 45 of the Architects Act permits the Council with the approval of the Central Government to make regulations not inconsistent with the provisions of the Act or Rules thereunder to carry out the purpose of this Act. Section 44 of the Architects Act empowers the Central Government to make Rules. The Rules made under this section is to be laid as soon as

may be after it is made before each House of Parliament. Reading this section it clearly appears that the consent of each House of Parliament is required. There is rule making power and the Central Government has made regulations known as Architects (Professional Conduct) Regulations, 1989 which prescribes that all partners in a firm of architects should be registered architects. It is submitted before us that respondent No. 5 being a diploma holder in Civil Engineering and not an architect, the firm cannot be said to have been constituted by architects and thus not in accordance with law. It is further submitted by the learned counsel for the petitioner that the respondent Board and the partners of the respondent No. 3 are hand in glove to share consultancy fees of Rs. 10 crores to be paid by the respondent Board.

14. The respondent Housing Board has its own architectural department and is having about 200 qualified Engineers and architect personnels from the level of Chief Engineer to Junior Engineer. It is specifically averred in the petition that despite this huge infrastructure, having experienced and qualified Engineers and Architects who have prepared the master plan and design for Gotha Housing Township, the respondent Board has appointed the respondent No. 3 firm only to siphon the funds of Gujarat Housing Board illegally.

15. On behalf of respondent Housing Board an affidavit is filed by one Patel Ramanlal Bhulabhai. In the title of the affidavit or in the operative part of the affidavit we do not find the status of deponent and therefore it is difficult for us to state in what capacity he has filed the affidavit. The Housing Board has come out with a case that the members of the Indian Institute of Architects are interested persons and have invoked the jurisdiction of this court to decide the disputed questions of facts.

16. With regard to the advertisement given in Western Times dated 18.1.1997 the Housing Board has come out with an explanation that the Housing Board is expected to send the information to the District Information Officer of the Government of Gujarat and it is for him to decide as to in which newspaper the advertisement should be published. It is submitted that thus the Housing Board had no control over the said department regarding giving of the advertisement in a particular newspaper. It is specifically averred in para 7 of the affidavit that "I say that referring to the advertisement, it is clear that

there was no intention of the Gujarat Housing Board to give consultancy of township i.e. Gotha Oganaj to respondent Nos. 3 to 6. In fact, the advertisement makes it clear that it was intended to create a general panel of architects consultancy firm in Ahmedabad, Baroda and Rajkot circles separately." The Housing Board has further stated in the affidavit that the Board had not decided to give advertisement in a particular newspaper and it had not advertised for giving consultancy to private architects for its particular township of Gotha-Oganaj.

17. With regard to the firm, in para 8 of the affidavit the Housing Board has come out with a version that respondent No. 3 firm is a sister concern of M/s. Sanjay Shah & Associates and that the partners of the firm are the partners of the said firm. It is further stated in the affidavit that M/s. Sanjay Shah & Associates was working as Architects and Engineers. It is further averred in the affidavit by the deponent that respondent No. 3 firm was formed in 1997 with the intention to provide the architectural services to the Government and in view of this fact 10 marks were awarded to respondent No. 3 considering the experience of M/s. Sanjay Shah & Associates. Deponent of the affidavit has not placed on record any material to indicate the work entrusted to M/s. Sanjay Shah and Associates, working as Architects and Engineers or no documentary evidence is placed on record for that firm to indicate its existence etc. Thus, wrong excuse is given for awarding them 10 marks. In para 9 of the affidavit the Housing Board has given details about the work so as to justify that the work is required to be done by an Architect and Engineer. From the contents of para 9 it appears that the Board is trying to suggest that majority of the work was required to be done by an Engineer and not by an Architect and work was not within the scope of the firm managed by architects alone and thus has tried to justify the inclusion of name of respondent No. 3 in the panel of architects.

18. Respondent Board in para 13 of the affidavit has suggested that the Housing Board has awarded consultancy services to the firm and not to the individual partners. The Board is of the opinion that if the firm is having a registered architect as a partner it complies with the guidelines. The Board has denied that it had 2000 qualified Engineers and Architects from the level of Chief Engineer to the level of Junior Engineers. It is averred that in fact the Board has strength of 180 qualified engineers and architects. From the affidavit it appears that incorrect figure of "2000" qualified

engineers was referred and therefore the Board has denied the same but has admitted about staff of 180 persons as stated hereinabove. In the affidavit it is admitted that the Board has technical staff who are trained and experienced in planning, supervision etc. in conformity with the Government rules and regulations. However, it is stated that the staff is not in touch with the prevailing trends of the market. Thus, the officer of the respondent Board is conveying that the officers of the respondent Board are not upto date with the day-to-day management and research in the Engineering or housing sector. The Board has justified its action by stating that to develop the Township with modern concept of living, it has decided vide its Resolution No. 209/97 dated 27.6.1997 to avail of the services of private architectural consultancy.

19. We have perused the affidavit placed on record by respondent No. 7, Council of Architects, affidavit in rejoinder on behalf of the petitioner and the affidavit filed on behalf of respondent Nos. 3, 5 and 6. It was submitted before us that in the architectural firm it is not necessary that all the partners must be architects. It was submitted before us that huge work is entrusted to respondent No. 3 and interference by this court at this stage would stall the work which is in progress. It was submitted before us that the scheme will be completed within a short period. A statement showing progress of different schemes of Gujarat Housing Board, Ahmedabad, in twonship Gotha-Oganaj is placed before us. So far as residential development of 205 LIG T/S and 196 MIG T/S is concerned it was submitted that the work has been completed. With regard to other work in progress we have perused the details. So far as these two schemes are concerned, planning was undertaken by Gujarat Housing Board which is clear from the remarks column. So far as the other types of work is concerned, the statement makes it clear that except 401 houses referred to hereinabove, nothing is completed. Out of 5629 residential houses except 401 houses, one entrance gate and one amenity (out of 16), no construction work is carried out. So far as the infrastructure development is concerned, no roads are constructed. For 1583 houses tenders are only finalised. For 586 houses tenders are under finalisation and for 1668 houses tenders are not invited. It appears that for about 1111 tenements there is some progress but what is the stage of construction is not placed on record. Whether digging of the ground is completed for construction or whether plinth area is completed or what type of work has been carried out has not been stated. Thus, except 401 houses not a single house is ready.

20. An application was submitted by the learned advocate Mr. Clerk being Civil Application No. 12021 of 1999 on behalf of Gujarat Housing Board Engineers Association through its President for joining as a party but after some hearing it was stated that if the application is to be allowed then the respondents would like to file reply and thus wanted to delay the hearing of the matter. Even otherwise, in our opinion, it is not necessary to entertain the application as the court can decide the matter in absence of applicants of Civil Application No. 12021 of 1999. The applicants are not likely to be adversely affected. No relief is sought against the applicants. Hence this Civil Application is rejected.

21 The dispute between the petitioner and the Housing Board is required to be decided, in view of the aforesaid facts and circumstances. One will also have to consider the contents of the advertisement and the extent of the circulation and the type of publication. On the basis of the advertisement and the extent of the circulation etc., can it be said that all the firms, association of persons, association of architects were deprived of submitting applications and by short circulation, people were not duly informed?

22. Reading the advertisement at Annexure-A, copy of which is at page 113 at Annexure-B (collectively) filed by respondent No. 2, it is clear that the Housing Board was intending to invite applications from reputed Architectural Consultancy Firms. and for the purpose of pre-qualification for architectural consultancy services with a view to appoint panels of Architectural Consultancy Firms, advertisement was given. Obviously, in view of the words used in the advertisement "Architectural Consultancy Firms" a person reading the advertisement would consider that an application can be submitted only by a firm of architects and not by a firm or association of persons of which one is not an architect as defined in Architects Act. In view of this advertisement, persons similarly situated like respondent No. 3 were obviously deprived of making application. When the Board is taking a decision, it was the duty of the Board to give publicity correctly. If it wanted to have only Architectural Consultancy Firms then it should have used the words as are used in the advertisement. After filing the petition respondent Board has come out with a version that the nature of work was such which could not be carried out by architects alone. If that was the opinion of the Board at the time of issuing the

advertisement, the Board could have said it clearly that the firms or association of persons of which one partner of the firm need not be an architect can apply and architects, with engineers as the partners, even diploma holders, can apply for the pre-qualification of services. The fact that the words `Architectural consultancy Firms' indicate that all the partners of the firm must be architects. It is clear that the Board is managed by the persons having qualifications in various branches. They have their own Law Officers. The Board is aware about the distinction between Architects and Engineers. The Board has employed in its services Engineers and Architects and therefore it was known to the Board the clear distinction between Architects and Engineers. Qualifications for Architects are prescribed in the Schedule of the Architects Act. Reading the Schedule it is clear that even a person not engaged in housing activities would know the distinction between Architects and Engineers. Therefore, it is difficult to accept the contention raised by the Board. The Board could have accepted applications on behalf of firms of architects alone. Thus, on the material aspect the Board has committed a serious error in accepting the application of respondent No. 3 a firm of an architect and an Engineer as an application submitted by a firm of Architects.

23. It is also required to be noted that looking to the agreement executed by and between the partners which has been discussed in detail in earlier part of the judgement and the power of attorney executed in favour of the firm by respondent No. 4, it is clear that the services of the architect as such were never solicited by the firm. The fact that agreement came to be executed between respondent No. 4 and 3 permitting the use of registration number and licence wherever and whenever required and under the agreement of partnership, the bank accounts were to be operated only by respondent No. 5 and one Sharadchandra Rajnikant Shah. It clearly appears that respondent no. 4 had to play no role in carrying out day-to-day activities of the firm. The aforesaid aspect is strengthened by the fact that the document of partnership refers that the respondent No. 4 has to permit the use of his registration number and licence as if it is the number of the partnership firm and the licence of the partnership firm and that all types of transactions were required to be entertained by Sanjay Sharadchandra Shah, respondent No. 5. Thus, the name of respondent No. 4 was used merely for the purpose of constituting a firm for the purpose of introducing the firm as the firm of architects. Respondent No. 4 in his affidavit has stated that he had been actively involved

in diligently rendering complete and comprehensive architectural services for development of the entire Township project of respondent No. 2 Board at village Gotha near Ahmedabad. No material is placed for the said purpose. The documents i.e. partnership deed and documents placed on record refer contrary to that. In his affidavit he has referred having his association with Sanjay Sharadchandra Shah and Associates, the firm which is providing technical consultancy in practice of Architecture, Engineering & Interior designs. He has stated that he is an active professional since 1984 with respondent No. 5. At the cost of repetition, it is required to be stated that the firm of architects can only have architects as its partners. However, it is open for an architect and an engineer to enter into an agreement of partnership and to carry on business but certainly such firm cannot introduce itself as the firm of architects or architectural consultancy firm. Respondent No. 4 has kept mum about the work to be carried out specifically by him. All aforesaid circumstances go to strengthen the say of the petitioner.

24. What was the necessity for the respondent No. 4, 5 and 6 to enter into an agreement on 1.4.1997 for having commenced business on 18.1.1997? The partnership deed is silent about the intention of the partners to carry on business as architectural consultancy firm. If that was so they would have referred in agreement itself. Therefore, it appears that after submitting an application, documents might have been executed later i.e. on 1.4.1997. Respondents ought to have placed on record details of application indicating the fact that three partners were partners of the firm and were applying in response to the advertisement. It appears that as and when necessity arose agreements were executed. Power of attorney is executed on 5.2.1998 by respondent No. 4 authorising Sanjay Sharadchandra Shah to act on behalf partnership firm and on the same date an agreement has been executed authorising the partnership firm to use his registration number and licence whenever and wherever required. It is also interesting to note that the firm is registered with the Registrar of Firms thereafter on 13.2.1998. There is an agreement between the Executive Engineer, Housing Division of Gujarat Housing Board and respondent No. 5. This clearly reveals that after this agreement, a further agreement between the partners of the firm has been executed so as to exclude respondent No. 4 from acting on behalf of the firm and authorising respondent No. 5 to act on behalf of the firm. Thus, it is clear that there was no firm in existence on the day on which advertisement appeared or

the firm has not carried out any work prior thereto. There is nothing to indicate what type of work has been carried out by the firm. Therefore, also the marks awarded to respondent No. 3 firm are awarded arbitrarily in empaneling respondent No. 3 in the panel as Architectural Consultancy Firms.

25 So far as the publicity is concerned, the project for constructing housing was required to be undertaken by three Circles, namely, Ahmedabad, Baroda and Rajkot. The scheme in question involves huge amount. For one project, consultancy fees of Rs. 10 crores are to be paid. This figure indicates the nature of the work. The total houses, under the scheme for which respondent No. 3 is appointed, required to be constructed are 5629 houses in large area of land situated on the border of Ahmedabad city. This is not the only scheme. For the purpose of preparing panel for carrying out huge work, it was the duty of the respondent Housing Board to see that there is proper advertisement.

26. The advertisement at annexure-A as well as at annexure-B collectively suggest for preparation of a panel of Architectural Consultancy Firms. No details about the projects to be undertaken or cost of projects to be undertaken are given. Advertisement nowhere refers the nature of work to be carried out with the help of an Engineer. Thus, an architect, reading the advertisement would be under an impression that the architect whose name will be empaneled will be required to carry out the work as an architect only. It is to be remembered that the nature of work to be performed by an architect and by an engineer is different though there may be overlapping. Grolier Electronic Publishing has published notes with regard to architects, architecture, modern architecture, Civil Engineering. Architecture is probably the oldest of the fine arts. In this country as well as in Western countries, even today, there are number of buildings constructed before several years. In medieval illuminated manuscripts, God was frequently shown armed with compass and mason's square, as an Architect of the Universe. History of significant buildings, castles, cathedrals, palaces, temples and manor institutional monuments shows what is the architecture.

27. Well-known authors while describing architecture have taken care after scrutinising the nature of work performed by architects in the past and in the present. The sum and substance with regard to architecture can be said in four ways; all valid, all interrelated. It is the art and method of

erecting structures; it is a planned entity, the result of a conscious act; it is a body or corpus of work; it is a way to build. A good definition was provided by Roman architect VITRUVIUS in the 1st century AD and later on translated from Latin into English during the 17th century by Sir Henry Wotton. The definition recognizes that architecture embraces functional, technological and aesthetic requirements; it must have commodotie (utilitarian qualities), firmness (structural stability and sound construction) and delighte (attractive appearnce).

28. The name of architects first began to be known in Italy during the RENAISSANCE in the 15th and 16th centuries. The idea of a professional architect with formal training and academic qualifications is a product of the 19th century. In 1819 architecture courses were instituted at the ECOLE DES BEAUX ARTS (School of Fine Arts) in Paris; and thereafter in various universities in different years. The said art has retained to some extent its local requirements. Contemporary architects and scholars emphasize the influences of technology on the development of buildings. The use of iron and steel beams and columns released the wall from its traditional load bearing function and allowed architects to incorporate enormous windows and wide, open-plan floors, two of the most significant characteristics of modern architecture. No large modern building, however, would be practicable without the parallel development of elevators, central heating and ventilation systems, and electric lighting devices. Today, the system has further added the use of electronic devices which includes computers, video camaras and communication net work.

29. Architects considering the requirements of the time and need of people have to plan from townships to cities or big complexes such as commercial and residential. They have to bear in mind different requirement of the people in a country. Architects are also required to keep in mind the most important aspect which is known as `cost factor'.

So far as the Civil Engineers are concerned, ordinarily they are engaged in designing and constructing major structures and facilities bridges, dams, tunnels, tall buildings, factories, highways, airports, railroads, and so on. There is a significant contribution by this branch also and has glorified by creation of sanitary system to reduce disease and improve the environment. Transportation is one branch and it has divisions such as

highway, bridge and traffic engineering. Another branch known as structural engineering has to concentrate on the design of bridges and large buildings. Structrual engineer may cooperate with an architect, who concentrates on the aesthetic and functional aspects of design while the engineer is concerned with materials, methods of construction and other technical requirements. The present day sanitary engineer is concerned with water supply and sewerage systems for collecting and processing human wastes. Some Civil Engineers manage the construction of other engineers' designs, concerning themselves with the scheduling and coordinating phases of construction and inspection to assure adherence to specifications.

Considering various aspects it is clear that the function of architects and Civil Engineer cannot be the same. To some extent, the work might be appearing to be overlapping. The Engineer may carry out the work of erecting a building as per the design prepared by the architect. Architect may require supervision of the work carried out by the Engineer. It may be that in some cases one may require assistance of architect and engineer to complete the work but at the same time it must not be forgotten that the legislature has taken note of the fact that architects are professionals and qualifications are enumerated in the schedule to the Architects Act. So far as the Civil Engineers are concerned, nothing has been placed before us indicating that they are required to be enrolled with the statutory body recognised under the Act, empowering the statutory body to exercise powers over the members or to take action, such as disciplinary action. An engineer cannot be equated with an architect. This important aspect has been lost sight of by the Board while scrutinising the application.

30. The Board has come out with a very weak defence that it was for the Government to take a decision as to in which newspaper the advertisement should be circulated. Gujarat Housing Board should know its duties very well. It was for the Board to realize as what would be the outcome if there is no proper advertisement. It was the duty of the Board to see that there is proper circulation by giving advertisement in a newspaper having larger circulation. In our opinion, circulation of advertisement or publishing an advertisement in a newspaper having circulation in the evening only may not serve the purpose. General public is in the habit of

reading the daily newspaper in the morning. It was the duty of the respondent Board to see that their advertisement is published in daily newspaper having vast circulation and having not done so, this advertisement has not served the purpose and possibly by giving advertisement in a newspaper having no larger publicity and having publication in the evening has benefited certain persons. The fact that in Gujarat out of more than 500 architects, very limited number of persons have submitted applications clearly indicates that there was no wide publicity and the persons who were aware about the intention of the Board might have applied. Therefore also in absence of proper publication, it cannot be said that the Board has given proper publicity.

31. In view of the fact that Board though invited applications only from Architectural Consultancy Firms has treated the application submitted on behalf of the firm having not all the partners as architects. The decision taken by the Board for preparing panel is bad in law and it must be quashed and set aside. The decision of the Board must be quashed and set aside on the ground that respondent No. 3 is not an architectural consultancy firm. In view of the provisions contained in Architects (Professional Conduct) Regulations, 1989 the Board has committed a serious error in accepting the application. The decision of the Board is also required to be quashed and set aside on the ground that it has deprived others who were similarly situated like respondent No. 3. If in the advertisement, the Board would have made it clear that the association of persons or firm consisting of the architects and engineers can apply then possibly no injustice could be said to have been done. The petition is thus required to be allowed. As a result, inclusion of respondent No. 3 in the panel of "Architectrual Consultancy Firms" is not in accordance with law. Respondent No. 3 cannot be identified as a firm of architects. The agreement entered into between Gujarat Housing Board and respondent No. 3 on the basis that respondent No. 3 is a firm of architects, which in fact is not, is hereby quashed and set aside. However, it is directed that the Board shall carry out its obligation for the work carried out by the respondent No. 3 till this date.

Civil Application No. 1927 of 2000 does not survice and hence rejected.

32. In the result, the petition is allowed.

(D.M. DHARMADHIKARI, C.J.)

(B.C. PATEL, J)

(pkn)